

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATONYA SCONIERS, as Personal
Representative of the ESTATE OF
PATRICK P. THOMAS,

Case No. 4:24-cv-12425

Plaintiff,

District Judge F. Kay Behm
Magistrate Judge Anthony P. Patti

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS, GUS HARRISON
CORRECTIONAL FACILITY, and
HENRY FENRICK,

Defendants.

**ORDER FOLLOWING STATUS CONFERENCE, GRANTING LEAVE TO
AMEND, and SETTING DEADLINE FOR INITIAL DISPOSITIVE
MOTIONS/ANSWER**

This is a fee-paid, fully represented prisoner wrongful death/civil rights case, brought on behalf of the estate of the decedent, Patrick Thomas, who was in MDOC custody at the time of his September 17, 2023 passing. (ECF No. 1, ¶¶ 3, 12-42; *see also* ECF No. 13, PageID.80, 82-94.)

Judge Behm has referred this case to me for full pretrial matters. (ECF No. 10.) Currently pending before the Court is Defendants' January 22, 2025 motion to dismiss (ECF No. 11), as to which Plaintiff filed a timely response (ECF Nos. 12, 13), and Defendants have filed a reply (ECF No. 14).

The court noticed a video status conference for April 30, 2025 (ECF No. 15), and Attorneys Matthew Boehringer, Patrycja A. Klein, Michael R. Dean, and Sara Elizabeth Trudgeon appeared.

Upon consideration of the motion papers, the discussion during the video conference, and for all the reasons stated on the record by the Court, which are hereby incorporated by reference as though fully restated herein, Plaintiff is **GRANTED** leave to file an amended complaint, for the reasons identified in the March 14, 2025 filing (*see* ECF No. 13, PageID.74). Plaintiff **SHALL** file the amended complaint no later than **Wednesday, May 14, 2025**. When drafting the amended pleading, Plaintiff is encouraged to take into consideration the arguments put forth in Defendants' pending motion to dismiss (*see* ECF No. 11), and the rule that "[a]ny amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference." E.D. Mich. LR 15.1.

Once Plaintiff files the amended complaint, the Court will deem withdrawn Defendants' pending motion to dismiss (ECF No. 11), consistent with defense counsel's agreement during the April 30, 2025 video status conference.

No later than **Friday, May 30, 2025**, Defendants **SHALL** file any motion:

(1) averring a failure to exhaust administrative remedies,¹ (2) raising the defense of qualified immunity, or (3) for dismissal under Rule 12. If Defendants determine that these defenses do not apply, they must instead file an answer. If Defendants file an answer, then they shall also convene a conference with Plaintiff to put together a discovery plan and submit it to the Court. *See* Fed. Rules Civ. P. 16, 26(f).

The parties are reminded that the Undersigned is available to conduct all proceedings in this civil action in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. The *Notice, Consent, and Reference of a Civil Action to a Magistrate Judge* form (AO 85) is available for download at <http://www.mied.uscourts.gov>.

Finally, the parties must adhere to the Federal Rules of Civil Procedure, the E.D. Mich. Local Rules, and the Undersigned's practice guidelines – all of which are accessible via the Court's website (www.mied.uscourts.gov).

IT IS SO ORDERED.²

¹ “The summary judgment motion is especially well suited to pretrial adjudication of an exhaustion defense, because proof of lack of exhaustion generally requires resort to matters outside the pleadings, such as affidavits or documentary evidence[,]” and “Rule 12(b)(6) does not appear to be the proper vehicle to address an exhaustion defense under the PLRA, because failure to exhaust is not a pleading requirement.” *Anderson v. Jutzy*, 175 F.Supp.3d 781, 787 (E.D. Mich. 2016) (citations omitted).

² The attention of the parties is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days after being served with a copy of this order within

Dated: April 30, 2025



Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

which to file objections for consideration by the district judge under 28 U.S.C. § 636(b)(1).